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J. C. Garlington  
1908 - 1995

Sherman V. Lohn  
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Anita Harper Poe  
Larry E. Riley  
Susan P. Roy  
Robert E. Sheridan  
Brian J. Smith  
Peter J. Stokstad  
Kevin A. Twidwell  
William T. Wagner  
Kelly M. Wills  
Elena J. Zlatnik

May 8, 2009

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
VIA FEDERAL EXPRESS

FMCSA - 2009 - 0139

**RESPONSE TO NOTICE OF DEFAULT AND  
PETITION FOR RECONSIDERATION  
CASE NUMBER: MT-2009-0046-US1207**

Please be advised that this Firm is counsel to D-J Warp, Inc., US DOT #715943 in connection with Case Number MT-2009-0046-US1207. On behalf of the motor carrier, D-J Warp, Inc., we submit this response to Notice of Default which is dated May 6, 2009 and request reconsideration and vacation of the default pursuant to 49 C.F.R. §386.64. The motor carrier, D-J Warp, Inc. further requests that this entire action be stayed pending a determination on the Petition for Reconsideration and the administrative review of the compliance review.

Attached to this Petition you will find a copy of the Notice of Claim served on March 20, 2009. You will also find a copy of the Notice of Default and Final Agency Order dated May 6, 2009. In addition, attached you will find a March 31, 2009 correspondence which was forwarded in response to the Notice of Claim dated March 20, 2009. This March 31, 2009 correspondence was forwarded to the Department of Transportation, Federal Motor Carrier Safety Administration by the motor carrier in response to the Notice of Claim. However inartfully drafted, the response indicates an objection to the findings upon which the Notice of Claim are based.

The response that was forwarded in response to the Notice of Claim dated March 31, 2009 demonstrates a meritorious defense to the compliance review which necessitates an administrative review of the compliance review and the proposed conditional safety rating. The procedure related to the response to the Notice of Claim demonstrates excusable neglect on the part of the motor carrier, and his due diligence in seeking relief through the Notice of Claim.

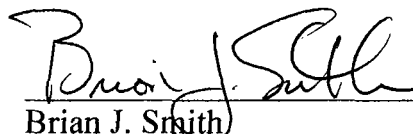
U.S. Department of Transportation  
Docket Operations, M-30  
RE: D-J Warp, Inc., US DOT #715943  
May 8, 2009  
Page 2

Accordingly, pursuant to 49 C.F.R. §386.64(b), the motor carrier requests reconsideration of the determination by the agency regarding the entry of the Petitioner's default. The Petitioner further requests that the final agency order be vacated as the motor carrier has demonstrated excusable neglect in properly responding to the Notice of Claim and further filed his response within eleven days of receiving the Notice of Claim, demonstrating due diligence in seeking relief.

The motor carrier has now retained counsel to represent the motor carrier in connection with these proceedings. The motor carrier's counsel is familiarizing himself with the documents identified and review in connection with the compliance review and the notice of claim and therefore requests that the default of the motor carrier be vacated and adequate time be provided to the motor carrier to properly respond to the Notice of Claim and the compliance review. A Petition for Administrative Review of the compliance review has been filed this date.

Attached to this petition is a certificate of service as required by 49 C.F.R. §386.6(c).

Dated this 8th day of May, 2009.



Brian J. Smith

GARLINGTON, LOHN & ROBINSON, PLLP  
Attorney for D-J Warp, Inc.

BJS:lpk

U.S. Department of Transportation  
Docket Operations, M-30  
RE: D-J Warp, Inc., US DOT #715943  
May 8, 2009  
Page 3

### CERTIFICATE OF SERVICE

This is to certify that on May 8, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the RESPONSE TO NOTICE OF DEFAULT AND PETITION FOR RECONSIDERATION to each of the parties listed below.

Bruce Holmes, Division Administrator Montana Division U.S. Department of Transportation Federal Motor Carrier Safety Administration 2880 Skyway Drive Helena, MT 59602	One copy by: FEDERAL EXPRESS Tracking Number: 7975 8021 0926
Trial Attorney Federal Motor Carrier Safety Administration Western Service Center Golden Hill Office Centre 12600 W. Colfax Ave., Suite B-300 Lakewood, CO 80215	One copy by: FEDERAL EXPRESS Tracking Number: 7975 8017 0149
U.S. Department of Transportation Federal Motor Carrier Safety Administration FMCSA Docket Clerk Western Service Center 12600 W. Colfax Ave., Suite B-300 Lakewood, CO 80215	One copy by: FEDERAL EXPRESS Tracking Number: 7975 8018 0437
U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor, Room W12-140 1200 New Jersey Avenue, SE Washington, DC 20590	One copy by: FEDERAL EXPRESS Tracking Number: 7965 9264 2665

Janie Kallis



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Western Service Center

**Certified/ Return Receipt Requested**

**Certified Receipt Number: 7008 3230 0002 4788 8646**

**March 20, 2009**

**Douglas W. Warp, President  
D-J Warp, Inc.  
6280 2nd Street NW  
Havre, MT 59501**

Golden Hills Office Centre  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215

Phone: (303) 407-2350

Fax: (303) 407-2339

**At: 303-407-2361**

**NOTICE OF CLAIM<sup>1</sup> -- Violations of 49 CFR § 395.8(c).**

**CIVIL PENALTY: \$1,720**

**Case Number: MT-2009-0046-US1207**

**US DOT Number: 715943**

**Dear Mr. Warp:**

A compliance review was conducted at Havre, MT on February 12, 2009. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against D-J Warp, Inc. for the amount of \$1,720.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit D-J Warp, Inc. from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal laws.

Case Number: MT-2009-0046-US1207

## SUMMARY OF VIOLATIONS

Your company is charged with:

1. Two (2) violations of 49 CFR § 395.8(c) False reports of records of duty status.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

## NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Ensure all drivers' records of duty status are accurate. Compare the drivers' records of duty status with other business records in your possession including, but not limited to, toll, fuel, repair, and other on the road expense receipts, as well as invoices, bills of lading, dispatch records, trip reports, and any other document generated by the trip, and driver earnings records, to verify accuracy of duty status record entries. Prohibit falsification of duty status records by any of your drivers.

### Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

## PENALTY

### Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

### Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Case Number: MT-2009-0046-US1207

### Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

### History of Prior Violations

Your history of prior violations of the FMCSRs, HMRs and/or FMCCRs, where applicable, also may have increased the civil penalty beyond that which would have otherwise been proposed in this Notice of Claim. [The following enforcement actions have been considered in the calculation of the civil penalty proposed herein:]

### Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to the "Section 222" provision and maximum penalties have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

MT-2008-0029-US1207

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
395.8(e)	R	2	\$860.00		\$1,720.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$1,720.

## **HOW TO REPLY TO THE NOTICE OF CLAIM**

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim.

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commercial Regulations.

Case Number: MT-2009-0046-US1207

You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at 303-407-2350. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation  
Federal Motor Carrier Safety Administration  
Western Service Center  
Golden Hills Office Center  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215

Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) REQUEST FOR ADMINISTRATIVE ADJUDICATION: You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii).

Case Number: MT-2009-0046-US1207

Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute only the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <http://www.fmcsa.dot.gov/>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

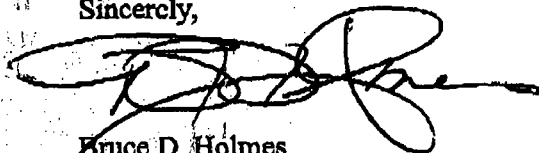
IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.



Case Number: MT-2009-0046-US1207

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



Bruce D. Holmes  
Division Administrator  
Montana Division

Enclosures

[Faint, mostly illegible text from the body of the letter, appearing to be a series of paragraphs.]

Case Number: MT-2009-0046-US1207

### APPLICABLE STATUTES

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

Case Number: MT-2009-0046-US1207

**VIOLATIONS DISCOVERED DURING REVIEW/ INSPECTION**

1	395.8(e)	Rzaszutak, Casey	12/13/2008
2	395.8(e)	Kethcart, Gary	12/17/2008
3	395.8(e)	Kethcart, Gary	12/19/2008
4	395.8(e)	Donahoe, Chad	01/08/2009

TABLE STATUTORY

TABLE STATUTORY

TABLE STATUTORY

## STATEMENT OF CHARGES

### Violation 1 --- 49 CFR 395.8(e) - False reports of records of duty status.

#### CHARGE #1:

On or about 12/13/2008, D-J Warp, Inc., used Driver Casey Rzaszutak to drive a commercial motor vehicle in interstate commerce from Worthington, MN, to Sacramento, CA. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because supporting documents show that he purchased fuel in Columbus, NE, on 12/13/2008, while the driver's record of duty status shows that he departed Columbus, NE, at 0700 MST on 12/12/2008, en route to Liberal, KS, and was traveling from Liberal, KS, through Winslow and Seligman, AZ, to Essex, CA, on 12/13/2008.

#### CHARGE #2:

On or about 12/19/2008, D-J Warp, Inc., used Driver Gary Kethcart to drive a commercial motor vehicle in interstate commerce from Oxnard, CA, to Dayton, OH. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because supporting documents show that he purchased fuel in Albuquerque, NM, on 12/19/2008, while the driver shows that he shows sleeper berth in Lupton, AZ at 2245 CST on 12/18/2008 until 0630 CST on 12/19/2008 and PC Miler shows Albuquerque, NM, to be on the driver's recorded route between Lupton, AZ, and Bristow, OK, while the driver shows that he entered the sleeper berth at Lupton, AZ, at 2245 CST on 12/18/2008 and exited the sleeper berth at Bristow, OK, at 0630 CST on 12/19/2008 with no driving time.

**SERVICE LIST**

This is to certify that on March 20, 2009, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Douglas W. Warp, President  
D-J Warp, Inc.  
6280 2nd Street NW  
Havre, MT 59501

Original  
Certified/ Return Receipt Requested

Bruce D. Holmes, Division Administrator  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
2880 Skyway Drive  
Helena, MT 59602

One Copy  
Internal Mail

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
FMCSA Docket Clerk  
Western Service Center  
Golden Hills Office Centre  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215

One Copy  
Internal Mail

*Jamie H. Ross* 03/20/09



U.S. Department of  
Transportation

Federal Motor Carrier  
Safety Administration

Western Service Center

FEDEX  
7975-7178-3840

May 6, 2009

Golden Hill Office Centre  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215

Phone: (303) 407-2350  
Fax: (303) 407-2339

## NOTICE OF DEFAULT

## FINAL AGENCY ORDER

D-J WARP, INC.  
6280 2ND STREET NW  
HAVRE, MT, 59501

Re: Case Number: MT-2009-0046-US1207  
US DOT#: 715943

Dear Sir or Madam:

This letter is a notice of default and final agency order ("Order"), and demand for payment of the outstanding debt owed to the United States Department of Transportation, Federal Motor Carrier Safety Administration, for violation(s) of Federal Motor Carrier Safety Regulations, Hazardous Material Regulations, and/or Federal Motor Carrier Commercial Regulations.

D-J WARP, INC. was notified of the proposed penalty assessment in the amount of \$1,720.00 by a Notice of Claim served on D-J WARP, INC. on March 20, 2009.

Pursuant to 49 C.F.R. § 386.14(c), because D-J WARP, INC. failed to reply to the Notice of Claim within thirty (30) days of the service of the Notice of Claim, D-J WARP, INC. is in default. The default causes the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to automatically become the Final Agency Order in this proceeding. The Final Agency Order is effective five (5) days after the service of this Order. In this case the Final Agency Order is effective on May 11, 2009. The default constitutes an admission of all facts and violations alleged in the Notice of Claim and a waiver of D-J WARP, INC.'s opportunity to contest the claim. These violations shall constitute a history of prior offenses in any future civil penalty proceeding and may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

Payment of the outstanding balance in the amount of \$1,720.00 is due and payable on May 11, 2009. You may pay electronically through our SAFER website at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" option under the FMCSA Service section. Alternatively, you can mail your

**cashier's check, certified check or money order payable to the Federal Motor Carrier Safety Administration. The payment should be mailed for:**

**Federal Motor Carrier Safety Administration  
Western Service Center  
Golden Hill Office Centre  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215**

Pursuant to 49 C.F.R. § 386.14(c)(3), failure to pay the civil penalty as directed in this Order constitutes a violation of the Order, and subjects D-J WARP, INC. to additional penalties as prescribed in the regulations. Additionally, D-J WARP, INC. may be liable for interest and administrative penalties.

If D-J WARP, INC. fails to pay this debt, D-J WARP, INC. will be prohibited from operating in interstate commerce pursuant to 49 C.F.R. § 386.83. If D-J WARP, INC. is registered as a for-hire motor carrier, freight forwarder, or broker, D-J WARP, INC.'s registration will be suspended in accordance with 49 C.F.R. § 386.84. D-J WARP, INC. may, in accordance with State laws, be subject to additional penalties such as suspension and/or revocation of State vehicle registration privileges. Additionally, the Order will be referred to the United States Department of Treasury for collection, and may also be referred to the Attorney General for an action to be brought in the United States District Court to enforce the Final Agency Order and collect the civil penalty.

Pursuant to 49 C.F.R. § 386.64, D-J WARP, INC. may file a petition for reconsideration of the Final Agency Order within 20 days after the service of this Order. The original petition for reconsideration must be filed in accordance with 49 C.F.R. § 386.7 with the Assistant Administrator by personal delivery or mail addressed as follows:

**U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590**

Copies of the petition for reconsideration must also be served on all persons listed in the Certificate of Service of this Notice of Default and Final Agency Order, pursuant to 49 C.F.R. §§ 386.6 and 386.7. The petition must include the following, which must also be provided to all persons on the Certificate of Service:

- (a) A copy of the Notice of Claim served on March 20, 2009 in this case,
- (b) A copy of the Notice of Default and Final Agency Order served on May 6, 2009,
- (c) All evidence you are relying upon in support of the petition for reconsideration,<sup>[1]</sup> and
- (d) A Certificate of Service as required by 49 C.F.R. § 386.6(c).<sup>[2]</sup>

Pursuant to 49 C.F.R. § 386.64(b), the only issue that will be considered upon reconsideration by the Assistant Administrator is whether a default has occurred under 49 C.F.R. § 386.14(c). The Final Agency Order may be vacated (set aside) where you can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief to the Notice of Claim. If D-J WARP, INC. files a petition for reconsideration in accordance with 49 C.F.R. § 386.64, the entire action will be stayed unless the Assistant Administrator orders otherwise.

William R. Paden, Field  
Federal Motor Carrier  
Western Service Center  
Golden Hill Office Centre  
12600 W. Colfax Ave.  
Lakewood, CO 80215

For questions regarding this Order, you may contact an Enforcement Program Specialist at (303) 407-2350.

Sincerely,

*William R. Paden*

William R. Paden, Field Administrator  
Federal Motor Carrier Safety Administration  
Western Service Center  
Golden Hill Office Centre  
12600 W. Colfax Ave. Suite B-300  
Lakewood, CO 80215

- (1) All written evidence shall be submitted in the following forms: (a) a written statement of a person having personal knowledge of the facts alleged, or (b) documentary evidence in the form of exhibits attached in a written statement identifying the exhibit and giving its source. See 49 C.F.R. § 386.49.
- (2) A Certificate of Service shall accompany all documents served in a Civil Penalty Proceeding under 49 C.F.R. § 386. The certificate of service must show the date and manner of service, be signed by the person making service, and list the persons served. See 49 C.F.R. § 386.6(c).



**CERTIFICATE OF SERVICE**

This is to certify that on May 6, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the Notice of Default And Final Agency Order to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

D-J WARP, INC. 6280 2ND STREET NW HAVRE, MT, 59501  Case # MT-2009-0046-US1207 U.S. DOT # 715943	One Copy by:  FEDEX Tracking Number: 7975-7178-3840
Bruce Holmes, Division Administrator Montana Division U.S. Department of Transportation Federal Motor Carrier Safety Administration 2880 Skyway Drive, Helena, MT 59602	One Copy Internal Mail
Trial Attorney Federal Motor Carrier Safety Administration Western Service Center Golden Hill Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215	One Copy Internal Mail
U.S. Department of Transportation Federal Motor Carrier Safety Administration FMCSA Docket Clerk Western Service Center Golden Hill Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215	One Copy Internal Mail

Cathy Beckett

March 31, 2009

To Whom It May Concern:

I am writing to dispute the sampling of the logs taken by my auditor , Lynn Gillet. When he left our house, he said he looked at 13 logs after taking a sampling of roughly 150 logs back to his motel. In the 13 logs he claims he found 4 incorrect logs. We are not disputing that the 4 are incorrect. We are disputing that he looked at only 13. Which now we hear has turned into a total of 20.

We still dispute this. He looked at 150 to find the 4 errant logs. This puts our ratio at 4 of 150 which is better than industry standard. According to our notice of claim we are being fined for 2 of those 4. By paying the fine it is an admission of guilt. We feel we are guilty of the 4 sampled from the 150, not the 20 he says he looked at. This 4 of 20 gives us a conditional rating which we do not feel we deserve.

Sincerely,

Douglas W. Warp  
D-J Warp Inc.